

1140

No. 3101

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,

Appellants,

vs.

TARR & McCOMB, INCORPORATED, a Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

FILED  
DEC 22 1917

F. D. MONGKTON,  
CLERK.



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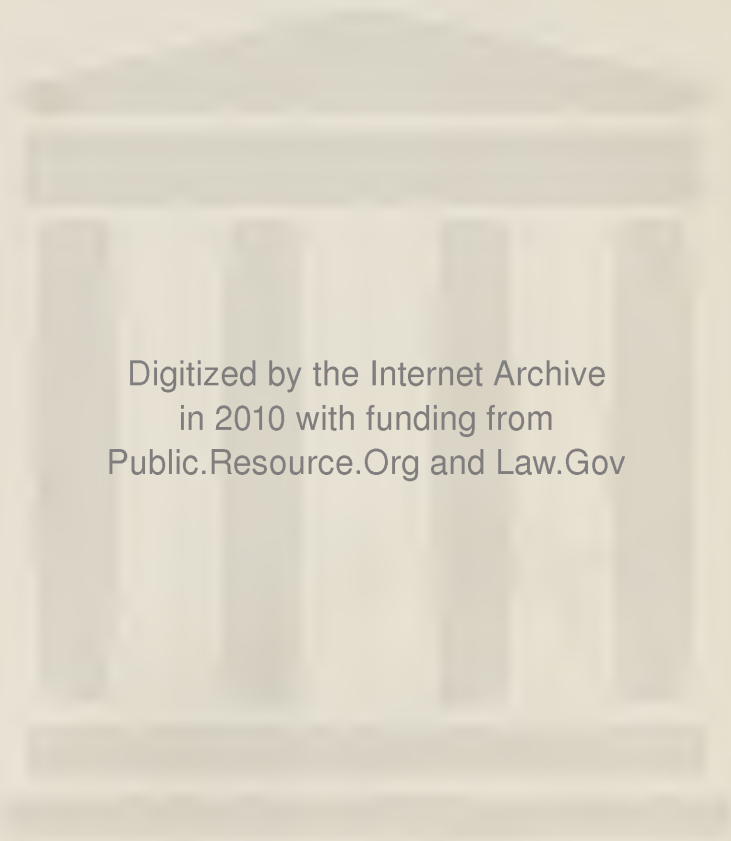
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

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fornia.

For Defendant and Appellee:

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Security Building, Los Angeles, California.

**Citation.**

By the Honorable Oscar A. Trippet, One of the Judges of the District Court of the United States, for the Southern District of California, in the Ninth Circuit, to Tarr & McComb, Incorporated, a Corporation, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city and county of San Francisco, in the circuit above named, on the 22d day of December, 1917, pursuant to an appeal filed in the clerk's office of the District Court of the United States, for the Southern District of California, wherein Harris and Stevens Corporation, a Corporation, and C. C. Harris, are appellants, and you are appellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand in the city of Los Angeles, in the district and circuit above named, this 24 day of November, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States the one hundred and forty-second.

OSCAR A. TRIPPET,  
Judge of the District Court of the United States, for  
the Southern District of California, in the Ninth  
Circuit.

[Endorsed]: Original. No. D-32 in Equity. Dept.  
..... In the District Court of the United States, in



and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a Corporation, *et al.*, plaintiffs, vs. Tarr & McComb, Incorporated, a corporation, defendant. Citation. Received copy of the within citation this 27th day of November, 1917. Charles C. Montgomery, attorney for defendant. Filed Nov. 27, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, suite 701 Washington Building, Los Angeles, Cal., attorneys for plaintiffs.

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, INCORPORATED, a Corporation,

Defendant.

**Complaint in Equity.**

To the Judges of the District Court of the United States, for the Southern District of California:

Harris and Stevens Corporation, a corporation, and C. C. Harris, each and both citizens and residents of the state of California, within said Southern District of California, and the Southern Division thereof, bring this their bill against Tarr & McComb, Incorporated, a corporation, a citizen and resident of the state of

Arizona, and thereupon your orators complain and say:

I.

That this suit is between citizens of different states:

Your orators are and each of them is a citizen and resident of the state of California, within said Southern District of California, and the Southern Division thereof.

Your orator, Harris and Stevens Corporation, is now, and was at all the times herein stated, a corporation incorporated and existing under and by virtue of the laws of the state of California, and doing business within the said state of California, in said Southern District of California, and the Southern Division thereof.

Your orator C. C. Harris is now, and was at all the times herein stated, the duly elected, qualified and acting president and general manager of your orator Harris and Stevens Corporation, and is now, and was at all the times herein stated, the owner and holder of forty-eight thousand five hundred (48,500) shares of the issued and outstanding capital stock of your orator Harris and Stevens Corporation, and is now, and was at all the times herein stated, the owner and holder of all the issued and outstanding capital stock of your orator Harris and Stevens Corporation, except sixty-five hundred (6500) shares thereof.

The defendant Tarr & McComb, Incorporated, is now, and was at all the times herein stated, a corporation incorporated and existing under and by virtue of the laws of the state of Arizona, and doing business

within the state of California, in said Southern District of California, and the Southern Division thereof.

## II.

The amount in controversy herein, to-wit, the value of the leasehold interest in real property in paragraph III hereof hereinafter described, together with the moneys retained and withheld by the defendant as in paragraph XI hereof hereinafter alleged, exceeds the sum of fifty thousand (\$50,000.00) dollars, exclusive of interest and costs.

## III.

On the 20th day of March, 1917, and for a long time prior thereto, your orator Harris and Stevens Corporation was in the possession of and in the quiet and peaceful enjoyment and use of that certain real property situate within the county of Kern and state of California, in the said Southern District of California, and Northern division thereof, which said real property is particularly described as follows:

The east one-half (E. $\frac{1}{2}$ ) of the northwest one-quarter (N.W. $\frac{1}{4}$ ) of the northeast one-quarter (N.E. $\frac{1}{4}$ ) of section 8, township 29 south, range 28 east, Mount Diablo base and meridian, containing 20 acres more or less.

And also the easterly five hundred (500) feet of the north fifteen (15) acres of the west one-half (W. $\frac{1}{2}$ ) of the northeast one-quarter (N.E. $\frac{1}{4}$ ) of the northeast one-quarter (N.E. $\frac{1}{4}$ ) of section 8, township 29 south, range 28 east, Mount Diablo base and meridian. under and by virtue of two certain leases executed respectively by E. D. Burge to your orator Harris and Stevens Corporation, and by Volcan Oil and Refining

Company to J. E. Lamb, and by said J. E. Lamb assigned to your orator C. C. Harris, and by said C. C. Harris assigned to your orator Harris and Stevens Corporation, copies of which said leases, and each thereof, together with said assignments thereof, are hereto annexed and marked respectively, Exhibit "A" and Exhibit "B." Under and by the terms of said leases, and each thereof, your orator Harris and Stevens Corporation became entitled to and did operate said above described parcels of real property, and each thereof, for the production of crude petroleum, and your orator Harris and Stevens Corporation did possess and operate said tracts of real property, and both thereof, from the time of taking possession thereof under the said respective leases up to and including the 20th day of March, 1917.

#### VI.

That on the 24th day of July, 1915, your orator Harris and Stevens Corporation made and entered into a written agreement with said defendant, a copy of which said agreement is hereto annexed and marked Exhibit "C." Under and by the terms of said written agreement, your orator Harris and Stevens Corporation agreed to sell and deliver to said defendant all of the crude petroleum produced from said above described tracts of real property, and both thereof, during the life and existence of said leases thereon hereinabove referred to and described, for the sum of thirty (30c) cents per barrel of forty-two gallons, free on board the cars at Waits Station, in the said county of Kern, state of California, but said defendant did not agree to take and receive said production in the event that said

defendant should be unable to sell said production for thirty (30c) cents per barrel at or upon said property.

V.

That on the 4th day of October, 1916, for the purpose of securing the payment of certain advances and payments of money made and to be made to your orator Harris and Stevens Corporation, by said defendant, your orator Harris and Stevens Corporation assigned said hereinabove described leases, and both thereof, to said defendant, copies of which said assignments, and each thereof, are hereto annexed and marked respectively Exhibit "D" and Exhibit "E."

That thereafter, and early in the year 1917, your orators became and were indebted to sundry individuals, co-partnerships and corporations in a large amount, to-wit, about the sum of forty thousand (\$40,000.00) dollars. That all of said indebtedness was then due and payable. That the said creditors of your orators demanded immediate payment of their claims and threatened your orators with suits for the enforcement of the payment of their said claims. Thereafter, and on the 12th day of March, 1917, your orators, as parties of the first part, the defendant, as party of the second part, and the said creditors of your orators, with the exception of three of said creditors hereinafter mentioned, as parties of the third part, made and entered into an agreement, a copy of which is hereto annexed and marked Exhibit "F." Under and by the terms of said agreement, your orator Harris and Stevens Corporation agreed to sell and deliver to the defendant, and the defendant agreed to purchase free on board the cars at Waits Station in the said

county of Kern, state of California, or in a pipe line at or near the point of production, all of the oil produced from the hereinabove described leased premises, and all of the oil at the date of said agreement on hand unmarketed, and all of the oil which should hereafter be produced from the operation of said leased premises during the life of said leases and until all of the claims of said creditors, together with interest thereon at the rate of seven (7%) per cent per annum from the first day of March, 1917, shall have been fully paid, at the same prices paid at the wells by Standard Oil Company to the producer for oil of equal gravity in the same field, less the sum of twenty-two and one-half (22½c) cents per barrel. And said defendant agreed to pay over to The Citizens National Bank of Los Angeles all of said moneys so agreed to be paid by it for the said crude petroleum as aforesaid, which said moneys said agreement provided should be paid by The Citizens National Bank of Los Angeles, in an amount equivalent to thirty (30c) cents per barrel of said oil in payment of rents and royalties accrued upon and pursuant to said leases, and for payment of operating expenses thereof accruing from and after the date of the said agreement, including the payment of a salary to your orator C. C. Harris of two hundred fifty (\$250.00) dollars per month, if said thirty (30c) cents per barrel should suffice therefor, after payment of the aforesaid expenses. Under and by the terms of said agreement it is further provided that after said creditors shall have been paid in full, said defendant shall take and receive as soon thereafter as convenient from said properties, twenty-eight thousand

(28,000) barrels of oil for which said defendant shall pay your orators the sum of thirty (30c) cents per barrel, and that thereafter during the life of said leases, said defendant shall market said oil for not less than said Standard Oil Company's aforesaid price, and from the proceeds thereof shall pay to your orators thirty (30c) cents per barrel, shall retain for itself twenty (20c) cents per barrel, and the balance of said price shall be equally divided between your orators and said defendant. Under and by the terms of said agreement it is further provided that all accounts receivable of your orators, at the date thereof, shall be assigned to the said The Citizens National Bank of Los Angeles, or its nominee, and all moneys paid thereon shall be disbursed by the said bank to said creditors, *pro rata*, according to the amounts of their respective claims; that oil well casing in and upon said property is of the approximate value of three thousand (\$3,000.00) dollars, and that the same shall be sold under the direction of said bank and the proceeds of such sale shall also be disbursed by said bank to said creditors, *pro rata*, according to their respective claims. Under and by the terms of said agreement it is further provided that in the event said defendant shall make default in receiving and paying monthly for said oil produced from said leased premises, the said The Citizens National Bank of Los Angeles, on behalf of your orators and of said creditors, shall have and take such recourse against said defendant for such default as might otherwise be had and taken by your orators, if said agreement had been made and entered into between your orators and said defendant only; provided

always that in having and taking such recourse, said bank shall act upon the direction of a majority amount of said creditors, and shall apply all of the proceeds or sums of money accruing from any such recourse to and amongst the said creditors *pro rata*, according to their respective claims, including said interest. Under and by the terms of said agreement it is further provided that the defendant would and did hold the assignments of said leases, and of each thereof, executed by your orator Harris and Stevens Corporation, on October 4, 1916, for the benefit of all of the creditors, parties to said agreement, and that, upon the payment of the claims of all of said creditors, the said assignments should be and become of no further effect and cancelled.

Under and by the terms of said agreement it is further provided that in consideration of the premises all of said creditors agree to extend the time of payment of their respective claims against your orators to and including the first day of September, 1917, and promise and agree, during said period, to have or take no recourse for enforcement or security of their said claims, except pursuant to and according to the provisions of said agreement, and said creditors further agree that, if on or before the first day of September, 1917, there shall have been paid to and received by them upon their said claims pursuant to said agreement, the sum of not less than six thousand dollars (\$6,000.00) dollars, exclusive of any sum or sums of money paid to or received by them from the proceeds of the sales of oil well casing, as in said agreement provided, or from the proceeds of said accounts re-



ceivable as aforesaid, then, and in that event, the said creditors agree that the maturity of their said claims shall be postponed for a further period of six (6) months, and if during said last mentioned extension of time of payment the amount paid to and received by said creditors to and upon their said claims shall be equal to six thousand (\$6,000.00) dollars, the maturity of their said claims shall be again postponed for a third period of six (6) months, and in like manner it is agreed that the maturity of said claims of said creditors shall be successively postponed by periods of six (6) months whenever and as long as the amount paid to said creditors during the preceding six (6) months shall be not less than the sum of six thousand (\$6,000.00) dollars.

## VII.

That thereafter, and on or about the 21st day of March, 1917, three of the creditors of your orators having claims against your orators aggregating about the sum of three thousand (\$3,000.00) dollars, refused to sign and become parties to said agreement of March 12, 1917, and said creditors so refusing to sign and become parties to said agreement as aforesaid threatened that they would commence suits and actions against your orators for the recovery of their several claims, and would cause writs of attachment to be issued and levied against the hereinabove described tracts of real property, and both thereof, and the interests of your orators and the defendant therein. That thereupon, for the purpose of protecting the interests of your orators and of the said creditors of your orators who had theretofore signed and become

parties to said agreement of March 12, 1917, your orators surrendered to said defendant the possession of said above described tracts of real property, and both thereof, together with all the personal property situate thereon and appurtenant thereto, and the said defendant represented to and agreed with your orators that it would take and receive possession of the said real and personal property and hold and operate the same for the benefit of your orators and the said creditors of your orators who had signed and had become parties to said agreement of date March 12, 1917, Exhibit "F" hereto. That said representation so made as aforesaid by said defendant was false, and said defendant, at the time it made said representation, knew the same to be false, and your orators allege on information and belief that said defendant made the said promises, and each of them, without any intention on its part of performing the same, and then and there intended to keep the property so surrendered to it for its own use and not for the benefit of your orators and the said creditors of your orators who had signed and had become parties to said agreement of date of March 12, 1917, and that it made said promises and accepted said possession with the intention of defrauding your orators.

#### VIII.

That notwithstanding all the facts hereinabove alleged, said defendant has, from time to time, rendered to the said The Citizens National Bank of Los Angeles, statements showing receipts and expenditures from the operation of said properties, and has paid to said The Citizens National Bank of Los Angeles, for the benefit

of all the said creditors of your orators, certain sums of money to be by said bank disbursed to said creditors in partial payment of their respective claims, and the said The Citizens National Bank of Los Angeles has paid said sums of money so received by it from the defendant as aforesaid to the said creditors, who have received and receipted for the same.

## IX.

That shortly after the 21st day of March, 1917, the three creditors hereinabove mentioned who had theretofore refused to sign said agreement of March 12, 1917, as hereinbefore alleged, signed and became parties to the same, as of date of said March 12, 1917. That at the time your orator Harris and Stevens Corporation, and your orator C. C. Harris, as president thereof, surrendered said property as aforesaid, your orator Harris and Stevens Corporation was not possessed of any other property, and all of the property of your orator C. C. Harris, other than his interest in the real property hereinabove described, was heavily encumbered, and your orators were without any money or property whatsoever, otherwise than in this paragraph alleged.

## X.

That at the time of said surrender of the possession of said property your orators had performed and carried out all of their obligations and agreements with said defendant and with the lessors in said leases named and had not failed to perform or carry out each and every of their obligations and agreements with said defendant and with said lessors, and with each and all of them, and no consideration whatever

was paid to your orators, or to either of them, by said defendant for the surrender of the possession of said property.

## XI.

Your orators have repeatedly requested and demanded of the defendant that it render to them a just and true account of the expenses of operation of said property and leased premises, but said defendant has refused and still refuses to render such or any account thereof.

The defendant has retained and still retains and withholds from the said The Citizens National Bank of Los Angeles, without right or authority, large sums of money which it has received as income from the sale of oil produced from said property. That the said The Citizens National Bank of Los Angeles has repeatedly requested and demanded of the defendant that it render to it, the said bank, an account of the moneys in its hands and that it pay over the same to the said bank for the benefit of said creditors of your orators, but said defendant has refused and still refuses to render such account or to pay over said moneys, except certain sums of money which it has paid to said bank, from time to time, in amounts fixed and determined by it, the said defendant, arbitrarily; but your orators allege, on information and belief, that the sums and amounts of money heretofore paid by said defendant to the said The Citizens National Bank of Los Angeles do not constitute the full amount agreed to be paid by said defendant to the said bank for the use and benefit of the said creditors of your orators under and

by the terms of said agreement of date of March 12, 1917, Exhibit "F" hereto.

## XII.

That thereafter, and on or about the 29th day of June, 1917, your orators demanded the surrender to your orator Harris and Stevens Corporation of the possession of said premises, together with all personal property of every kind and character appurtenant to and used upon said parcels of real property, and both thereof, and demanded that defendant allow said property to be operated in accordance with the stipulations, agreements and conditions contained in said agreement of March 12, 1917, between your orators, parties of the first part, the defendant, party of the second part, and the creditors of your orators, parties of the third part, but said defendant refused and still refuses to surrender possession of said premises and refused and still refuses to allow said herein described property to be operated in accordance with the stipulations, agreements and conditions contained in said agreement of March 12, 1917, herein fully set forth.

## XIII.

The reason the said creditors of your orators are not made parties to this complaint is that said creditors are for the most part citizens and residents of the said state of California, and therefore cannot be made parties hereto without ousting the jurisdiction of this court.

Forasmuch, therefore, as your orators are without adequate legal remedy in the premises as and by the strict rules of common law and can only obtain relief in this court of equity, wherein matters of this nature

are property cognizable and relievable, your orators most respectfully pray:

1. That the title of your orator Harris and Stevens Corporation, as lessee herein described, and its ownership of the leasehold in and to said property and right to and immediate possession thereof as against this defendant, be affirmed and established.

2. That it be adjudged and decreed that the said real and personal property were received by the said defendant Tarr & McComb, Incorporated, and that the said property and the proceeds thereof have been and are held by defendant Tarr & McComb, Incorporated, in trust for your orators, and that said trust be adjudged to be terminated, and that the defendant be ordered to deliver said property to your orators forthwith.

3. That the defendant Tarr & McComb, Incorporated, be directed to account for the said property and all rents, income or profits which may have been derived from said property, and that the defendant be directed to return the same to your orators, and to execute all conveyances and documents necessary and proper to carry the decree of this Honorable Court into effect.

4. That the defendant Tarr & McComb, Incorporated, be hereafter forever enjoined from asserting any claim, right, title or interest in or to the aforesaid property, or any part thereof.

5. That the court shall direct such other and further relief as may seem just and equitable.

6. May it please the court to grant to the plaintiffs a writ of subpoena directed to said defendant Tarr &

McComb, Incorporated, commanding it to appear and answer this bill of complaint (but not under oath, answer under oath being expressly waived), and to abide by and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

Dated July 16, 1917.

CATES & ROBINSON,  
ALTON M. CATES,

Counsel,

Suite 701 Washington Building, No. 411½ South  
Spring Street, Los Angeles, California.

EXHIBIT "A."

LEASE.

This indenture, made this 6th day of May, 1915, by and between E. D. Burge of Orange county, state of California, hereinafter called the lessor, and Harris & Stevens Corporation, a corporation organized and existing under the laws of the state of California, having its principal place of business at the city of Los Angeles in said state, hereinafter called the lessee, witnesseth:

In consideration of the mutual agreements and covenants herein set forth, and the rental or royalty to be paid as hereinafter stated, said lessor does hereby lease upon said lessee, and said lessee does hereby take from said lessor upon the terms and conditions hereinafter set forth for a period of forty months, beginning the 1st day of January, 1915, and ending the 30th day of April, 1918 (with privilege of renewal of said lease upon the conditions hereinafter set forth), the following described real property situate in the county

of Kern, state of California, to-wit : The east half of the northwest quarter of the northeast quarter of section eight (8), township twenty-nine (29) south range twenty-eight (28) east, Mount Diablo base & meridian, containing twenty (20) acres, more or less, together with the rigs, materials, engines, boilers, machinery, tools, equipment and personal property thereon situate, for the purpose of operating said property for the production and sale of oil and gas.

As one of the considerations for the execution and delivery of this lease the lessee hereby agrees to pay to the National Bank of Bakersfield, at Bakersfield, California, for the lessor, the sum of twenty (20) cents per net barrel of forty-two gallons each upon all oil produced by said lessee upon said leased premises. All oil sold and delivered during any calendar month shall be paid for on or before the 25th day of the succeeding month. Payment to said National Bank of Bakersfield for the lessor shall be deemed to be payment to the lessor, and said bank is authorized to receive such payments hereunder according to the terms of this lease. Lessee shall have the right and privilege, without charge, to use whatever oil or gas is necessary for fuel in the operation of said leased premises.

The lessee hereby covenants and agrees to pump all the wells now on said leased premises continuously, to keep them in first-class condition, and to use every effort to make said wells produce their full capacity at all times.

Lessee shall have the right to use all tools, drilling machinery, materials and equipment now located on said leased premises during the term of this lease,



or any extension thereof, and agrees to keep the same in good condition and repair, and to return the same in good condition and repair to the lessor at the termination of this lease, or any extension thereof, ordinary wear and tear excepted. An inventory is to be made of said tools, drilling machinery, materials and equipment, by a representative of each of the parties hereto and shall be considered a part of this lease and attached hereto.

Lessee agrees to keep a true and accurate account of all oil produced by it upon said leased premises, and such book or books of account shall be open at any and all times for inspection by the lessor or his accredited agent. All labor and material necessary for operating said lease shall be purchased in the name of the lessee and paid for by it.

The lessee hereby covenants and agrees that it will not suffer any liens or attachments to be filed against said leased premises on account of labor, material or accident, and in case any such lien or attachment should be filed, lessee will defend same at its own cost and expense and pay and discharge any judgment or judgments that may be rendered on account thereof, and will carry insurance in a responsible company to protect against injury to any person employed upon said property; and lessor agrees that he will protect the lessee against any interference with its working and operating said premises by reason of any lien or attachment suffered by the lessor.

The lessor shall have the right and privilege of drilling any new wells on said property at any time during the term of this lease, or any extension thereof,

and in so doing to use the tools and machinery upon said property, provided the same be done in a reasonable manner and so as not to unreasonably or unnecessarily interfere with the operations of the lessee hereunder and provided that upon the completion of any new well the lessor shall give notice thereof to the lessee in writing and the lessee shall then have the right and option to take said well and pump same and to dispose of the oil and gas produced therefrom in the same manner and upon the same terms and conditions as herein set forth governing its operation and pumping of the wells now on said property, provided that the lessee shall exercise its right and option to so take said new well within thirty days after receiving such written notice from lessor, and shall, within said time, give lessor written notice of its said election, and in the event of lessee's failure to exercise its said option and give said notice within said time, then it shall thereafter have no right to take or operate said new well or have any interest in the product thereof, but said well may thereafter be pumped and operated and the product thereof sold or otherwise disposed of by the lessor. However, the failure of lessee to exercise its option as to any new well or wells so drilled by lessor shall not be construed as a waiver of its right to exercise its said option as to any other well or wells which may thereafter be drilled on said property by the lessor.

It is understood and agreed that the lessee shall use a gas engine or engines for the operation of said property.

It is understood and agreed that the rent or royalty

of twenty cents per barrel herein provided to be paid the lessor by the lessee shall also apply to and be paid from sales of all oil now in storage in sumps or tanks on the said leased premises.

The lessor has this day placed in escrow with the National Bank of Bakersfield aforesaid, a grant, bargain, and sale deed executed by himself and M. M. Burge, his wife, conveying to F. F. Richards, as trustee for Ohio Crude Oil Company, a corporation, the hereinbefore described leased premises with the appurtenances, and materials, and equipment thereon situated, together with escrow instructions providing that in case there shall be received by said bank for the lessor on or before the 30th day of April, 1918, the sum of \$26430.40, together with interest thereon at the rate of 12% per annum from the date hereof, either from rent or royalties paid to said bank by the lessee herein, or moneys paid to said bank for the lessor by the grantee in said deed above-mentioned, or both, then that said bank shall deliver to said F. F. Richards, as trustee above-named, the said deed, and also providing that in case said sum of \$26430.40, together with interest as aforesaid, be not so received by said bank for the lessor on or before the said 30th day of April, 1918, then that said deed be returned to the lessor and that said escrow shall cease. And it is hereby understood and agreed that this lease is made for a period of time concurrent with the period of said escrow, and is subject to the right given in said escrow to said F. F. Richards, as trustee above-named, to have said deed delivered to him upon compliance with the terms of said escrow above-mentioned. And

in case the said F. F. Richards, as trustee as aforesaid, the grantee in said deed above-named, shall fail to comply with the terms of said escrow and receive said deed within the period in said escrow provided, and said escrow shall thereby be terminated, then the lessee shall have and is hereby given an extension of the term of this lease to and including the 31st day of December, 1923, upon the payment of like rental and royalty and performance of the covenants and conditions hereinbefore set forth.

The lessee hereby agrees that if, on or before the 1st day of January, 1916, there shall be furnished by or through the lessor, and delivered on the premises demised, 1500 feet of 40 lb. 10 inch pipe for use in redrilling wells Nos. 6 and 7 on said demised premises, it will, at its own expense immediately proceed with the redrilling of said wells, and each of them, and will prosecute said work continuously and diligently in a good and workmanlike manner to completion. Lessee agrees that it will, at its own cost and expense, redrill well No. 1 on said demised premises, and furnish all labor, pipe and materials therefor, and that it will begin said work of redrilling said well No. 1 not later than the 1st day of April, 1916, and will prosecute said work continuously and diligently in a good and workmanlike manner and make reasonable effort to make the same a producing well.

If the lessee fails to carry out any of the obligations or requirements of this lease or any extension thereof as herein specified said lessee shall immediately forfeit all rights secured to it herein, and this lease or extension thereof shall terminate without notice, and in

such case lessee agrees that it will quit said premises and give lessor peaceful possession of the property covered by this lease or any extension thereof, and in such case it is agreed that lessor shall have the right to enter upon and take possession of said premises without necessity of suit or action, and remove all persons therefrom.

Lessee shall not assign this lease, or any interest therein, or sublet said leased premises, or any portion thereof or any interest therein, without the consent of the lessor in writing first obtained, and any attempted assignment or subletting shall *ipso facto* work a forfeiture of this lease or any extension thereof.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the said lessor has hereunto set his hand and seal and the said lessee has caused these presents to be executed by its president thereunto first duly authorized, in its corporate name and under its corporate seal, the day and year first hereinabove written.

E. D. BURGE.

(Seal.)

HARRIS & STEVENS CORPORATION,

By C. C. Harris,

Its President.

State of California, County of Kern—ss.

On this 7th day of June in the year one thousand nine hundred and fifteen A. D., before me, W. W. Laidley, a notary public in and for said county and state, residing therein, duly commissioned and sworn,

personally appeared E. D. Burge, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) W. W. LAIDLEY,  
Notary Public in and for Kern County, State of  
California.

#### EXHIBIT "B."

San Diego, Cal., April 18th, 1914.

The following resolution was offered:

Resolved that the matter of consent to the assignment of lease on the Volcan Oil & Refining Co., from C. C. Harris to Harris & Stevens Corporation, be left entirely to the judgment of C. H. Wagner, and he is hereby authorized to act upon same without further call.

On motion of Director B. J. Edmonds, seconded by Director Jas G. Fleming, and carries unanimously the foregoing resolution was adopted.

G. F. NOLAN, Secy.

VOLCAN OIL & REFINING CO.

San Diego, Cal., Dec. 16th, 1913'.

Mr. J. E. Lamb, Bakersfield,

Mr. C. C. Harris, Los Angeles, Cal.,

Gentlemen:

Beg to advise that the Volcan Oil & Refining Co. consents to sale of lease between J. E. Lamb and the Volcan Oil & Refining Co. dated Sept. 20th, 1913, to

C. C. Harris of Los Angeles, provided C. C. Harris agrees to fulfill all obligations as agreed upon in said lease.

Mr. Harris agreed that he will not release nor sell his interest in this lease without the written consent for the lessor.

The clause requiring the redrilling of well #1 by January 1st, 1914, is changed to read as follows: The lessee agrees to redrill well #1 and finish this work complete by February 1st, 1914, etc.

Inventory. C. C. Harris to become responsible for all tools and supplies belonging to the Volcan Oil & Refining Co., as per inventory to be taken by J. E. Lamb and C. C. Harris, within 10 days from the date of this letter.

Loading rack. Revenue from the loading rack from other sources than C. C. Harris, is the property of the Volcan Oil & Refining Co. C. C. Harris will collect same and remit it to the Volcan Oil & Refining Co. by the 10th of each month.

Under a certain agreement dated Dec. 13th, 1913, between J. E. Lamb and C. C. Harris there is due and payable to J. E. Lamb the amount of \$700.00 in monthly payments of \$50.00. It is mutually agreed by C. C. Harris to pay \$25.00 of this installment to J. E. Lamb and the other half of \$25.00 to the Volcan Oil & Refining Co. until the full amount of \$700.00 has been paid up.

Yours very truly,

(Corp. Seal)

C. H. WAGNER, President.

G. F. NOLAN, Secretary.

Accepted Dec. 17th, 1913.

C. C. HARRIS.

J. E. LAMB.

This indenture, made this 20th day of September, 1913, between the Volcan Oil & Refining Co., a corporation organized and existing under the laws of the state of Arizona, lessor, and J. E. Lamb of Bakersfield, Kern county, California, lessee, witnesseth:

That the said lessor has by these presents leased unto the said lessee upon the following terms and conditions that certain personal property, located on the easterly 500 ft. of the north fifteen acres of the west half of the northeast quarter of the northeast quarter, of section eight, township 29 S., R. 28 east M. D. B. & M.

This personal property consists of seven oil wells, one water well, warehouse, cottage, bunkhouse, tool-house, water tank, boilers, pipe lines to the Warren Refinery, pipe line to Judkins Refinery and loading rack, and loading rack on S. P. Railway right-of-way, tools and supplies, as per inventory attached to this instrument.

In consideration for this lease the lessee agrees to deliver to the lessor one-sixth of all the oil produced from said land until January 1st, 1914, and one-fourth of all oil produced from said land between January 1st, 1914, and September 20th, 1918, excepting the amount consumed in operation of the wells and the cleaning of the oil. Said delivery of oil shall be made at such times and in such quantities as the lessor may desire. The lessee shall provide storage for the oil belonging to the lessor. The oil shall be delivered to the lessor in the customary good market condition, either f.o.b. cars at the railway switch belonging to the lessor or at the terminal ends of the pipe lines connected with tanks of the lessor; or if the lessor shall



so elect said lessee shall pay to said lessor its proportion of the proceeds of the sale of oil produced and sold from said land. Such payment to be made in cash on or before the 25th day of each month for all oil sold the previous month.

In further consideration for the lease, the lessee agrees to redrill well #1 and finish this work complete before January 1st, 1914, and drill well #4 during the year 1914, finishing each well with not less than 8" casing and to a depth of not exceeding 1,000 ft, and paying for all labor and material necessary to complete these wells. It is understood that lessee can use for this work all material and tools on ground belonging to lessor.

Lessee agrees that he will keep all property leased to him in good condition during the life of this lease and return same to the lessor at the expiration of the lease in good condition, natural wear excepted. Lessee agrees to pay for all labor and material used in operation and maintenance during the life of this lease and agrees that he will give all this work personal attention and supervision. Lessee agrees that he will not release nor sell his interest in this lease without the written consent of the lessor.

This lease is to expire September 20th, 1918, the lessee to have the right of renewal for five years, at the said terms.

The lessee agrees to keep true and accurate accounts showing the production of the wells operated under this lease and the sales and deliveries of oil therefrom, which accounts shall be open at all times to the inspection of the lessor or its agents, and said lessee shall

furnish to said lessor at its office, corner 1st & I Sts., San Diego, Cal., on every Saturday, a complete statement of the production of the wells during the previous week, estimated barrels of oil on hand, deliveries of oil and to whom, the terms and price.

The lessee shall permit the lessor or its agents free access to the property leased for the purpose of examining the condition of the wells and other property and investigating the faithful performance of the contract by the lessee.

The lessee agrees to operate the oil wells continuously during the life of this lease, excepting when price of oil at Bakersfield should fall below 30c per barrel, when lessee may discontinue the operating until the price of oil is again at 30c per barrel.

All taxes on the land and on the improvements are to be paid by the lessor.

Water well. The water well is to be pumped by the lessee as he elects. Should water be sold to outside parties, one-quarter of the receipts of such sales is to be paid to the lessor.

All tools and supplies belonging to the lessor shall be turned over and invoiced to the lessee at a valuation agreed upon by lessee and lessor and shall be returned to the lessor at the expiration of the lease in good order, natural wear and tear excepted, otherwise shall be paid for by the lessee at the expiration of the lease.

All labor and material necessary for the operation of the property shall be purchased in the name of lessee and paid for by him. The property of the Volcan Oil & Refining Co. is to be posted by lessor with notices

stating that the Volcan Oil & Refining Co., or its property is not to be held liable for claims of any nature. The lease shall not suffer any lien to be filed against the lessor's property on account of labor, material or accidents and in case any lien should be filed he shall defend same wholly at his own cost and expense and pay any judgment that may be rendered on account thereof. In case said lessee refuses or neglects to defend any action to enforce lien or liens as aforesaid, then said lessor may defend same and pay any judgment rendered thereon and the said lessee agrees to pay to said lessor any and all expenses incurred by said lessor in such defense, payment of judgment and attorney fees.

Should the lessee fail to carry out any of these obligations herein specified, neglect to drill wells as specified, keep the wells in good pumping order, refuse or neglect to pump any of the wells on said land, or should violate any of the covenants, conditions or obligations hereof, the lessee shall immediately forfeit all rights secured to him hereby and this agreement shall terminate without notice, and in such case the lessee shall quit said premises and give the lessor peaceful possession of the property covering by this lease and any personal property which may have added to it during the life of this lease.

In case of sale of the property, this lease shall be considered as cancelled and the lessee shall be paid by the lessor such amounts as he has expended for redrilling well #1 and drilling well #4 for material and labor. The lessee shall file with the lessor his itemized bill of expense, duly sworn to, as soon as either well

mentioned has been finished and the amount actually paid out by him shall be all that he is entitled to in case of a sale.

It is hereby understood and agreed that this agreement shall be binding upon said lessor and said lessee and their respective heirs, executors, administrators, successors and assigns.

In witness whereof, the said lessor, by its present and secretary has herewith set its hand and seal the day and year above written.

(Corp. Seal)           C. H. WAGNER, President.  
                                  G. F. NOLAN, Secretary.

J. E. LAMB, Lessee.

The undersigned Volcan Oil and Refining Company, a corporation duly organized and existing under and by virtue of the laws of the state of Arizona, does hereby consent that the certain indenture of lease executed by said corporation on the 20th day of September, 1913, to J. E. Lamb and thereafter assigned by said J. E. Lamb to C. C. Harris, which said assignment has heretofore been assented to, ratified and confirmed by the undersigned, may be assigned and transferred by said C. C. Harris to Harris and Stevens Corporation, a corporation duly organized and existing under and by virtue of the laws of the state of California, and having its office and principal place of business at #515 Bernardo street, in the city of Los Angeles, county of Los Angeles, state of California.

In witness whereof, said Volcan Oil and Refining Company has caused these presents to be executed by its president and secretary thereunto duly authorized

and its corporate seal to be hereunto affixed this 28th day of April, 1914.

Executed in duplicate.

VOLCAN OIL AND REFINING COMPANY,

By C. H. Wagner, President.

By G. F. Nolan, Secretary.

(Corp. Seal)

State of California, County of San Diego—ss.

On this 28 day of April in the year of our Lord one thousand nine hundred and fourteen before me, Oliver L. Sellers, a notary public in and for said county of San Diego, state of California, residing therein, duly commissioned and sworn, personally appeared C. H. Wagner, known to me to be the president, and G. F. Nolan, known to me to be the secretary of Volcan Oil and Refining Company, the corporation that executed the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

OLIVER L. SELLERS,

Notary Public in and for the County of San Diego,  
State of California.

I, C. C. Harris, for a valuable consideration do hereby sell, assign, transfer and set over all of my right, title and interest in and to the within and foregoing described lease unto Harris and Stevens Corporation, a corporation duly organized and existing under and by virtue of the laws of the state of California,

subject to all of the covenants and agreements on behalf of the lessee therein contained.

Dated at Los Angeles, California, this 30th day of June, 1914.

Executed in duplicate.

C. C. HARRIS.

State of California, County of Los Angeles—ss.

On this 30th day of June in the year of our Lord one thousand nine hundred fourteen before me, Hazel D. Crabb, a notary public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared C. C. Harris, known to me to be the person whose name is subscribed to the within and annexed instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

(Seal) HAZEL D. CRABB,  
Notary Public in and for the County of Los Angeles,  
State of California.

Harris and Stevens Corporation, a corporation duly organized and existing under and by virtue of the laws of the state of California, does hereby accept the assignment of the within and foregoing described lease, and hereby agrees to abide by and carry out all of the terms and conditions of said lease therein contained.

In witness whereof, said Harris and Stevens Corporation has caused these presents to be executed by its president and secretary thereunto duly authorized and

its corporate seal to be hereunto affixed this 30th day of June, 1914.

Executed in duplicate.

HARRIS AND STEVENS CORPORATION,

By C. C. Harris, President.

By L. L. Stevens, Secretary.

(Corp. Seal)

State of California, County of Los Angeles—ss.

On this 30th day of June, in the year of our Lord one thousand nine hundred fourteen, before me, Hazel D. Crabb, a notary public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared C. C. Harris, known to me to be the president, and L. L. Stevens, known to me to be the secretary, of Harris and Stevens Corporation, the corporation that executed the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

HAZEL D. CRABB,

Notary Public in and for the County of Los Angeles,  
State of California.

EXHIBIT "C."

This contract and agreement, made in duplicate this 24th day of July, 1915, by and between Harris & Stevens Corporation, a corporation organized and existing under the laws of the state of California, having

its principal place of business at the city of Los Angeles in said state, party of the first part, and Tarr & McComb, Incorporated, a corporation organized and existing under the laws of the territory of Arizona, whose principal place of business is in Kingman, Mohave county, Arizona, and with an office in Los Angeles, California, party of the second part.

Witnesseth: That for and in consideration of the covenants and conditions herein contained and subject to the terms and restrictions hereinafter set out, party of the first part agrees to sell and deliver on board the cars at Waits Station, Kern county, California, and second party agrees to buy at the prices and terms hereinafter specified the entire output of crude oil from the following described properties.

The properties covered by this contract are those now under lease to the first party as follows:

The properties covered by a lease made May 6, 1913, for a period of 40 months with privilege of renewal upon certain conditions, by E. D. Burge to Harris & Stevens Corporation, to-wit:

E. $\frac{1}{2}$  N.W. $\frac{1}{4}$  N.E. $\frac{1}{4}$ ; section 8, township 29 south, range 28 east, Mount Diablo B. & M., Kern county, California, containing 20 acres, more or less.

The properties covered by the foregoing Burge lease are also under agreement by F. F. Richards, trustee for Ohio Crude Oil Co., with Harris & Stevens Corporation, to lease to said Harris & Stevens Corporation on the same terms as in the Burge lease contained, if said trustee should be able to redeem said properties.

The properties covered by a lease made September 20, 1913, for a period of five years, and right of renewal



for five years, by Volcan Oil & Refining Co. to J. E. Lamb, and with the consent of said Volcan Oil & Refining Co. assigned by said J. E. Lamb to C. C. Harris, and by said C. C. Harris to Harris & Stevens Corporation, to-wit:

The easterly 500 feet of the north 15 acres of the W. $\frac{1}{2}$  N.E. $\frac{1}{4}$  N.E. $\frac{1}{4}$ , section 8, township 29 south, range 28 east, Mount Diablo B. & M., Kern county, California.

Properties covered by a lease made June 30, 1914, for a period of one year with privilege of renewal for 3 months, by Harry Gray to Harris & Stevens Corporation, to-wit:

S. $\frac{1}{2}$  W. $\frac{1}{2}$  E. $\frac{1}{2}$  N.E. $\frac{1}{4}$  N.E. $\frac{1}{4}$  and S.2- $\frac{1}{2}$  across E. $\frac{1}{2}$  W. $\frac{1}{4}$  N.E. $\frac{1}{4}$  N.E. $\frac{1}{4}$ .

All in section 8, township 29 south, range 28 east, Mount Diablo B. & M., Kern county, California.

Properties covered by a lease made October 5, 1914, for a period of one year, subject to termination on 30 days' notice in writing, by Spencer V. Cortelyou to C. C. Harris, to-wit:

N. $\frac{1}{2}$  W. $\frac{1}{2}$  E. $\frac{1}{2}$  N.E. $\frac{1}{4}$  N.E. $\frac{1}{4}$  of section 8, township 29 south, range 28 east, mount Diablo B. & M., in Kern county, Cal.

Renewals or new leases on the properties held under short time leases or any arrangements whereby party of the first part directly or indirectly has control of any of the properties above described during the life of this contract shall inure to the benefit of the second party under the terms of this contract, the intention being that this contract shall cover the properties above described for all or such portion or portions of

time that first party may control same during the life of this contract.

Wells covered by this contract are those now existing or which may hereafter be established during the life of this contract on the properties covered thereby.

The term of this contract shall be three years from the date hereof with an option to the second party to extend same for a period of two years on giving written notice thereof on or before 60 days prior to the expiration of the first three years.

The quantity of oil which the second party is entitled to receive hereunder is the entire output of the above described properties. Said is estimated by the first party to be now approximately 6,000 barrels per month.

Accumulation of oil on the properties of the first party to an excess of 20,000 barrels, shall entitle said first party to sell such excess and account to said second party for 50% of the proceeds of such sale or sales above 30c per barrel, provided, however, that before making any sale or sales under this provision, first party shall give to second party an opportunity to sell within fifteen days of notice from first party the oil to the purchaser or purchasers produced by said first party, or to others, as second party may elect. In the event the second party elects to sell to the purchaser or purchasers produced by first party when there is an accumulation of oil as aforesaid, said second party shall pay, as hereinafter provided, 30c per barrel for such oil and in addition 50% of the amount of such sale or sales above 30c per barrel on the excess accumulated above 20,000 barrels.

Measurement of said oil shall be according to the official capacity of the cars used as shown by the capacity sheets of the railroad or company whose cars are used, and shall be adjusted to temperature at 60 degrees Fahrenheit.

Delivery, loading and shipping of oil shall be as nearly as possible in accordance with the requests of the second party.

Quality of oil shall be clean to within 2% moisture and base substance combined, and in no event is oil to be loaded containing in excess thereof. Deductions shall be made to clean oil.

Gravity of said oil is approximately 12 degrees Baume. In the event that it shall become necessary to ship a lighter gravity in order to sell said oil, second party may mix same with a lighter oil to be furnished by them. In such event first party shall do the mixing, including loading, unloading, pumping and such other things as may be necessary to reship same without expense to second party.

The price of oil covered by this agreement shall be 30c per barrel of 42 gallons f.o.b. cars at Waits Station, Kern county, California, except in case it shall become necessary for second party to sell the oil to be purchased of the first party at less than 30c per barrel in order to move said oil and prevent an accumulation thereof on the properties of the party of the first part. In such a case the second party, with the consent in writing of the first party, may sell said oil at less than 30c per barrel and account for such oil at the price or prices for which same is so sold.

When second party shall be unable to dispose of said

oil at 30c or more per barrel f.o.b. cars at Waits Station, Kern county, California, to good and responsible parties for payment within 30 days after delivery, said second party is released from all obligations in law and equity to receive or dispose of said oil except as above provided under the heading "Accumulation of Oil."

Payments for all oil delivered under this contract shall be made at Los Angeles, California, on or before the 20th day of each calendar month for all oil shipped during the preceding calendar month.

No liability shall attach to either party for any delays or damages occasion by, or arising from strikes, or other labor disturbances, earthquakes, fires, action of the elements, war insurrection, riot or rebellion or interference by civil or military authorities, or any other cause beyond the control of the defaulting party.

Assigns and successors of both parties are equally bound by and entitled to the benefits of this contract.

In witness whereof, the respective parties have caused these presents to be executed, attested, and their corporate seals to be hereunto affixed by their respective officers hereunto duly authorized.

HARRIS & STEVENS CORPORATION,

By C. C. Harris, President.

And By . . . . ., Secretary.

(Corporate Seal)

TARR & McCOMB, INC.,

By Harry McComb, President.

And By N. W. Tarr, Secretary.

(Corporate Seal)

## EXHIBIT "D."

## ASSIGNMENT OF LEASE.

Harris & Stevens Corporation, a corporation organized and existing under the laws of the state of California, having its principal place of business in the city of Los Angeles, in said state, in consideration of such indebtedness as now exists or may hereafter be contracted by it to Tarr & McComb, Incorporated, a corporation organized and existing under the laws of the territory of Arizona, whose principal place of business is in Kingman, Mohave county, Arizona, and with an office in Los Angeles, California, does hereby sell, assign and transfer to said Tarr and McComb, Incorporated, and set over all of its right, title and interest in and to the indenture and lease dated the 6th day of May, 1915, which lease was recorded June 10, 1915, in book 27 of leases, page 367, Kern county records, from E. D. Burge to Harris & Stevens Corporation.

This assignment is for the purpose of securing said Tarr & McComb, Incorporated, for all moneys now due from said Harris & Stevens Corporation to Tarr & McComb, Incorporated, or that may be hereafter advanced by said Tarr & McComb, Incorporated, to said Harris & Stevens Corporation or on their behalf, and further to secure any obligations or indebtedness that may hereafter be incurred or accrue on account of said Harris & Stevens Corporation to said Tarr & McComb, Incorporated.

This assignment is subject to all covenants and agreements on behalf of the lessee contained in the said

lease hereby assigned. In consideration of the premises and particularly of moneys to be hereafter advanced by said Tarr & McComb, Incorporated, to Harris & Stevens Corporation, the said Harris & Stevens Corporation agree to continue operations under said lease according to the terms and conditions thereof, and agree further as follows:

Said Harris & Stevens Corporation, in the event of any breach of condition of said lease whereby there may be a default therein, or upon failure to operate under said lease effectively, or upon default in any of its indebtedness, or obligations now or hereafter accruing or incurred by or on behalf of said company to Tarr & McComb, Incorporated, will upon demand in writing surrender the possession of the premises to Tarr & McComb, Incorporated, and this agreement shall become fully effective to transfer all the rights, title and interest of said Harris & Stevens Corporation to Tarr & McComb, Incorporated.

Failure for six months to operate at an average production of two thousand (2000) barrels per month, or failure in any one month to produce at least fifteen hundred (1500) barrels, shall be deemed to be failure to operate under this lease effectively.

Harris & Stevens Corporation, when Tarr & McComb, Incorporated become, as aforesaid, entitled to possession of the properties under the lease will quit said premises and give Tarr & McComb, Incorporated, peaceful possession of all the property covered by said lease, and all materials, tools and appliances used in the operation of said properties, whether owned by lessor or by Harris & Stevens Corporation and said

Tarr & McComb, Incorporated, shall have the right to enter upon and take possession of said premises and personal property without necessity of suit or action, and remove all persons therefrom, but without waiver of right to such action legal or equitable as it may be entitled to, it being conceded by Harris & Stevens Corporation, that the right would accrue for the appointment of a receiver upon failure to deliver possession as agreed.

The peaceable surrender of possession by Harris & Stevens Corporation to Tarr & McComb, Incorporated, and the taking of possession of the premises under the lease and personal property as above provided by Tarr & McComb, Incorporated, shall be in full satisfaction of all claims and demands against said Harris & Stevens Corporation, and shall be deemed liquidated damages, for failure to carry out the obligations and agreements of said Harris & Stevens Corporation with Tarr & McComb, Incorporated.

In witness whereof, said Harris & Stevens Corporation has caused these presents to be executed by its president and secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed this 4th day of October, 1916.

Executed in duplicate.

HARRIS & STEVENS CORPORATION,

By C. C. Harris, President.

By C. P. E. Menzies, (Acting) Secretary.

(Harris and Stevens Corporation Seal)

State of California, County of Los Angeles—ss.

On this 4th day of October, in the year one thousand

nine hundred and sixteen, before me, Albert A. Kidder, J., a notary public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and qualified, personally appeared C. C. Harris, known to me to be the president, and C. B. E. Menzies, known to me to be the acting secretary, of Harris & Stevens Corporation, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

(Notarial Seal)      ALBERT A. KIDDER, J.,  
Notary Public in and for the County of Los Angeles,  
State of California.

### EXHIBIT "E."

#### ASSIGNMENT OF LEASE.

Harris & Stevens Corporation, a corporation organized and existing under the laws of the state of California, having its principal place of business in the city of Los Angeles, in said state, in consideration of such indebtedness as now exists or may hereafter be contracted by it to Tarr & McComb, Incorporated, a corporation organized and existing under the laws of the territory of Arizona, whose principal place of business is in Kingman, Mohave county, Arizona, and with an office in Los Angeles, California, does hereby sell, assign and transfer to said Tarr & McComb, Incorporated, and set over all of its right, title and interest



in and to the indenture and lease made the 20th day of September, 1913, between Volcan Oil and Refining Company, a corporation organized and existing under the laws of the state of Arizona, and J. E. Lamb of Bakersfield, Kern county, California, by said J. E. Lamb assigned to C. C. Harris, and by said C. C. Harris assigned to Harris & Stevens Corporation, Incorporated.

This assignment is for the purpose of securing said Tarr & McComb, Incorporated, for all moneys now due from said Harris & Stevens Corporation to Tarr & McComb, Incorporated, or that thereafter may be advanced by said Tarr & McComb, Incorporated, to said Harris & Stevens Corporation, or on their behalf, and further to secure any obligations or indebtedness that may hereafter be incurred or accrue on account of Harris & Stevens Corporation to said Tarr & McComb, Incorporated.

This assignment is subject to all covenants and agreements on behalf of the lessee contained in said lease.

In consideration of the premises and particularly of moneys to be hereafter advanced by said Tarr & McComb, Incorporated, to Harris & Stevens Corporation, the said Harris & Stevens Corporation agree to continue operations under said lease according to the terms and conditions thereof, and agree further as follows:

Said Harris & Stevens Corporation, in the event of any breach of condition of said lease whereby there may be a default therein, or upon failure to operate under said lease effectively, or upon default in any of its indebtedness, or obligations now or hereafter accru-

ing or incurred by or on behalf of said company to Tarr & McComb, Incorporated, will upon demand in writing surrender the possession of the premises to Tarr & McComb, Incorporated, and this assignment shall become fully effective to transfer all the rights, title and interest of said Harris & Stevens Corporation to Tarr & McComb, Incorporated.

Failure for six months to operate at an average production of two thousand (2000) barrels per month, or failure in any one month to produce at least fifteen hundred (1500) barrels, shall be deemed to be failure to operate under this lease effectively.

Harris & Stevens Corporation, when Tarr & McComb, Incorporated, become, as aforesaid, entitled to possession of the properties under the lease, will quit said premises and give Tarr & McComb, Incorporated, peaceful possession of all the property covered by said lease and all materials, tools and appliances used in the operation of said properties, whether owned by lessor or by Harris & Stevens Corporation, and said Tarr & McComb, Incorporated, shall have the right to enter upon and take possession of said premises and personal property without necessity of suit or action, and remove all persons therefrom, but without waiver of right to such action, legal or equitable, as it may be entitled to, it being conceded by Harris & Stevens Corporation, that the right would accrue for the appointment of a receiver upon failure to deliver possession as agreed.

The peaceable surrender of possession by Harris & Stevens Corporation to Tarr & McComb, Incorporated, and the taking of possession of the premises under the

lease and personal property as above provided by Tarr & McComb, Incorporated, shall be in full satisfaction of all claims and demands against said Harris & Stevens Corporation and shall be deemed liquidated damages for failure to carry out the obligations and agreements of said Harris & Stevens Corporation with Tarr & McComb, Incorporated.

In witness whereof, said Harris & Stevens Corporation has caused these presents to be executed by its president and secretary thereunto duly authorized, and its corporate seal to be hereunto affixed, this 4th day of October, 1916.

Executed in duplicate.

HARRIS & STEVENS CORPORATION,

By C. C. Harris, President.

By C. P. E. Menzies, (Acting) Secretary.

(Harris and Stevens Corporate Seal)

State of California, County of Los Angeles—ss.

On this 4th day of October, in the year one thousand nine hundred and sixteen, before me, Albert A. Kidder, Jr., a notary public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared C. C. Harris, known to me to be the president, and C. P. E. Menzies, known to me to be the acting secretary of Harris & Stevens Corporation, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand

and affixed my official seal in said county, the day and year in this certificate first above written.

(Notarial Seal) ALBERT A. KIDDER, JR.,  
Notary Public in and for the County of Los Angeles,  
State of California.

#### EXHIBIT "F."

This memorandum of agreement, executed this 12th day of March, 1917, by and between Harris & Stevens Corporation, and C. C. Harris, first parties, and Tarr and McComb, Incorporated, second party, and the undersigned creditors of the first parties, as third parties hereto, witnesseth:

Whereas, said third parties are creditors of said Harris & Stevens Corporation and C. C. Harris, and as such, respectively, have and hold severally, claims against said corporation and against said Harris for and on account of goods sold and delivered, money loaned, rent due and services rendered to and accepted by said corporation or said Harris, aggregating the amount shown by the total set opposite the respective names of said creditors, signers hereof, which claims are overdue and unpaid; and

Whereas, said Harris & Stevens Corporation is the owner of a certain lease made May 6, 1915, by E. D. Burge to said corporation for the production of oil from the property therein described for a term ending December 31, 1923, which said lease is on file and of record in the office of the county recorder of the county of Kern, state of California, in book 27 of leases, at page 367, to which record reference is

hereby made for a full and more particular description of said lease; and

Whereas, said corporation is the owner of a certain lease made September 20, 1913, by Volcan Oil and Refining Company, a corporation, to J. E. Lamb, for the production of oil from the property therein described for a term ending September 20, 1923, which said lease is on file and of record in the office of the county recorder of the county of Kern, state of California, in book 29 of leases at page 140, to which record reference is hereby made for a full and more particular description of said lease; and

Whereas, Tarr and McComb, Incorporated, a corporation, hold assignments of said hereinabove described leases and of both thereof as collateral security for moneys advanced to the amount of \$. . . . . to said Harris & Stevens Corporation, which said assignments are of date of October 4, 1916; and

Whereas, said Tarr and McComb, Incorporated, on July 24, 1915, entered into a certain agreement with said Harris & Stevens Corporation respecting the purchase of the entire production of oil from the properties described in said leases for a limited period at the price of thirty (30c) cents per barrel f.o.b. the cars at Waits Station, Kern county, California; and

Whereas, said first parties and said second party desire to enter into an agreement for an extension of said last mentioned contract and all of the parties hereto desire to provide a method of payment of the claims of said third parties without litigation.

Now, therefore, in consideration of the premises and of the mutual agreements of the parties hereto herein-

after contained, the first parties agree to sell and deliver to the second party, and the second party agrees to purchase and receive f. o. b. the cars Waits Station, Kern county, California, or into a pipe line at or near the point of production, all of the oil produced from the aforesaid leases and now on hand and unmarketed, and all of the oil which may hereafter be produced from the operation of said leases during the life thereof at and for the following prices and upon the following named terms and conditions, viz: Until all of the claims of said third parties, being the undersigned creditors of said first parties, together with interest thereon at the rate of seven per cent per annum from the 1st day of March, 1917, shall have been fully paid, and second party will pay for all of said oil now on hand and to be produced from the operation of said leases the same price paid at the wells by Standard Oil Company to the producer for oil of equal gravity in the same field, less the sum of twenty-two and one-half ( $22\frac{1}{2}$ ) cents per barrel, and said second party will on or before the 15th day of each calendar month pay the aforesaid price for all of said oil produced and delivered to it at said point of delivery during the preceding calendar month to the Citizens National Bank of Los Angeles, which is hereby authorized and directed to collect, receive and receipt for all of said sums of money and shall apply and disburse said sums of money as follows, to-wit: An amount equivalent to thirty (30c) cents per barrel of said oil in payment of rents and royalties accruing upon and pursuant to said leases and for payment of operating expenses thereof accruing from and after the date of this agree-

ment, including the payment of a salary to said C. C. Harris of two hundred fifty (\$250) dollars per month if said thirty (30c) cents per barrel shall suffice therefor after payment of the aforesaid expenses, and said Citizens National Bank of Los Angeles shall further and within ten (10) days after receipt of said moneys in each month pay and disburse the balance thereof pro rata to and upon the payment of the claims of said creditors, being the third parties hereto, including interest as aforesaid. It is expressly understood and agreed that the amount of the proceeds of said sales of oil to be disbursed by said Citizens National Bank of Los Angeles for the operation of said leases, for rents and royalties thereon and said salary of C. C. Harris shall not exceed thirty (30c) cents per barrel of said oil.

After said creditors shall have been paid in full as aforesaid, said second party shall take and receive as soon thereafter as convenient from said properties twenty-eight thousand (28,000) barrels of oil for which said second party shall pay said first parties the sum of thirty (30c) cents per barrel, and that thereafter during the life of said leases said second party shall market said oil for not less than said Standard Oil Company's aforesaid price of which said first parties shall have the first thirty (30c) cents per barrel and said second party shall have the next twenty (20c) cents per barrel, and the balance of said price shall be equally divided between said second party and said first parties.

It is further understood and agreed by all of the parties hereto that all of the claims of said third par-

ties shall be further liquidated by the amounts collected and received from all of the accounts receivable of said first parties, all of which said accounts shall be and they are hereby assigned to said Citizens National Bank, or some person to be named by it, for collection, and that all of said accounts shall be accordingly collected by and the proceeds thereof received by said Citizens National Bank, or its said nominee, and that said Citizens National Bank shall promptly, after collection of said accounts, pay and disburse said proceeds to said creditors, being the third parties hereto, *pro rata* according to the amounts of their respective claims. And it is further understood and agreed that under the direction of said bank there shall be sold oil well casing in and upon said property of the approximate value of three thousand (\$3000) dollars, and that the proceeds of such sale or sales shall also be paid and disbursed by said bank to said creditors *pro rata*, according to their respective claims.

It is expressly understood and agreed that until all of the claims of said creditors, third parties hereto, shall have been fully paid, together with interest as aforesaid, said second party will take and receive monthly and pay therefor to said Citizens National Bank at the aforesaid price all of said oil that may be produced from the operation of said leases (and each and every one) and that said second party will also promptly after the execution of this agreement take and receive and pay for within the time limited as aforesaid all of the oil produced from said leases and now on hand, and that upon any default of said second party therein said Citizens



National Bank on behalf of said first parties and of said third parties shall have and take such recourse against said second party for such default as might otherwise be had and taken by said first parties if this agreement were made and entered into between said first parties and said second party only, provided always that in having and taking such recourse said bank shall act upon the direction of a majority amount of said creditors of said first parties and shall apply all of the proceeds or sums of money accruing from any such recourse to and amongst the said creditors pro rata according to their respective claims, including said interest.

It is further agreed that the assignments of said leases to Tarr and McComb, Incorporated, and executed October 4, 1916, shall be and remain in full force and effect, upon the express understanding between all parties hereto that said assignments shall inure to the benefit of all of said creditors. Upon payment of the claims of said creditors said Tarr and McComb, Incorporated, consents that said assignments of said leases shall be and become of no further effect and cancelled.

In consideration of the premises all of said third parties hereby agree to extend the time of payment of their respective claims against said first parties to and including the 1st day of September, 1917, and promise and agree during said period to have or take no recourse for enforcement or security of their said claims, except pursuant to and according to the provisions of this agreement, and said third parties further agree that if on or before the 1st day of September, 1917,

there shall have been paid to and received by them upon their said claims pursuant to this agreement the sum of not less than six thousand (\$6000) dollars, exclusive of any sum or sums of money paid to or received by them from the proceeds of sales of said well casing, or from the proceeds of said accounts receivable, then and in that event the said third parties agree that the maturity of their said claims shall be postponed for a further period of six months, and if during said last mentioned extension the amount paid to and received by them to and upon their said claims shall be equal to six thousand (\$6000) dollars, the maturity of their said claims shall be again postponed for a third period of six months, and in like manner it is agreed that the maturity of the said claims of said third parties shall be successively postponed by periods of six months whenever and as long as the amount paid to said third parties during the preceding six months shall be not less than the sum of six thousand (\$6000) dollars.

Said first parties and said third parties hereby give and grant unto said Citizens National Bank of Los Angeles all of such powers, authorities, rights, estates and interests in and to the property and subject matters of this agreement as may be required or necessary to enable said Citizens National Bank to act for and in behalf of said parties respectively as contemplated and provided for herein and particularly to accomplish the settlement of the claims of said third parties as aforesaid, and this agreement is expressly made for the benefit not only of all of the parties hereto but of said Citizens National Bank.

It is understood and agreed that said Citizens National Bank shall be entitled to retain out of all moneys received and disbursed by it hereunder the compensation of one-half of one per cent (1/2 of 1%) and such other reasonable costs, fees and expenses as may be requisite in the proper execution of this agreement.

It is further understood and agreed that unless all of the creditors of said first parties shall execute this agreement on or before the 20th day of March, 1917, that thereupon this agreement shall be null and void and all of the parties hereto shall be released of all liability thereunder.

Executed in triplicate this 12th day of March, 1917.  
(Corporation Seal)

HARRIS & STEVENS CORPORATION,

By C. C. Harris, President.

By C. P. E. Menzies, Secretary.

TARR and McCOMB, Incorporated,

By Harry McComb, President.

By N. W. Tarr, Secretary.

The Citizens National Bank of Los Angeles hereby approve the within and foregoing agreement and agrees to act as trustee and representative of the respective parties therein named as provided for therein.

CITIZENS NATIONAL BANK  
OF LOS ANGELES

By Wm. W. Woods, V. Pr.

CREDITORS, PARTIES OF THE THIRD PART.

Names	Amount
R. H. Herron Co.	\$1851.93
Address N. Main & Alameda	37.58 interest
	<hr/>
	\$1889.51

Tarr & McComb Inc.

Address by Harry McComb, Pres. \_\_\_\_\_

Mar. 12, 1917.

The Citizens National Bank of Los  
Angeles

By Wm. W. Woods, V. Pr.

Address \_\_\_\_\_

Mar. 12, 1917.

Address \_\_\_\_\_

Standard Oil Company

J. T. Quinn

Address \_\_\_\_\_

Mills Iron Works

E. C. Mills

Address \_\_\_\_\_

Mar. 13, 1917.

Rude & Opp

Per O. H. Rude

Address \_\_\_\_\_

Mar. 13, 1917.

Mack Motor Truck Co.

J. B. Somer

Address \_\_\_\_\_

3/13/17

M. L. McCray Oil Co.

By Harriet E. Beers

Address \_\_\_\_\_

Crescent Refining & Oil Co.

By B. F. Alps 3/13/17

Address \_\_\_\_\_

F. C. Kurrle,

3/13/17

Address \_\_\_\_\_

A. L. Blake Mar. 14-17

By Mrs. A. L. Blake

Address \_\_\_\_\_

United States Fidelity & Guaranty  
Company

By A. R. Schroeder

Address \_\_\_\_\_

E. A. Featherstone

O. O. Scott, Secty

Address \_\_\_\_\_

Perkins Bros.

Per R. B. Perkins

Address 217 W. 12 St. L. A.

\$86.00  
\_\_\_\_\_

Pike Automobile & Wagon Works

By J. L. Pike

Address 317 Central Ave. L. A. \_\_\_\_\_

Warren & Baily Mfg. Co.

Address E. A. Clark Secy

359 N. Main St. Los Angeles \_\_\_\_\_

J. G. Gano Mch 17, 1917

Address 959 Adobe St \_\_\_\_\_

Earl P. Cooper Co.  
 By G. F. Steppens  
 Address 1310 S. L. A. St. \_\_\_\_\_

S. E. Carter les Mc. by  
 H. C. Robbins Secy.  
 Address \_\_\_\_\_

Hercules Oil Refining Co.  
 Address O. N. Seller Jr. \_\_\_\_\_

Axelson Machine Co.  
 Address 1406 San Fernando St. 170.56  
 L. A. \_\_\_\_\_

Chas. Victor Hall Mch/20  
 Address 2131 Ocean View Ave  
 City \_\_\_\_\_

Mch. 20, 1917  
 Matt T. Mancha & Co.  
 Address 311 Security Bldg. \_\_\_\_\_

Electric Equipment Co. (Inc.)  
 By Negold \$68.16  
 Address \_\_\_\_\_

General Petroleum Corporation  
 Rodney S. Austin Comptroller  
 3/20/17  
 Address \_\_\_\_\_

Southwest Welding & Mfg. Co.  
 3/20/17 By J. D. Wiley Cashier  
 Address \_\_\_\_\_

Kerckhoff-Cuzner Mill & Lumber Co.

3/20/17

Address By J. D. Wiley Cashier \_\_\_\_\_

U. S. Fidelity & Guaranty Co.

3/20 Per M. C. Cralle

Address \_\_\_\_\_

3/20 Advance Truck Co. H. Goffels

Address 1417 No. Main \_\_\_\_\_

Master Carburetor Corporation

Los Angeles Branch Office

3/20 Chas. G. Harnes

Address 922 So. Los Angeles St. \_\_\_\_\_

L. A. Auto Equipment Repair Co.

3/20/17 M. W. Weiss

Address 307 W. Pico St. \_\_\_\_\_

3/20/17 R. A. Dallugge

Address \_\_\_\_\_

3/20/17 E. A. Clampitt

Address 1037 N. Alameda St. \_\_\_\_\_

A. F. Gilmore Co.

Address 827 Mer. Nat. Bk. Bldg. \_\_\_\_\_

March 19/1917 E. B. Gilmore

Mgr. & Sect.

C. C. Harris Oil Co.

Address #701 College St. \_\_\_\_\_

By E. R. Snyder - Secy.

Richfield Oil Co.

Mr. G. O. B. Winton, Secy.

Address \_\_\_\_\_

Estate of Adolphus Busch,

Per E. V. Krug Mgr.

Address \_\_\_\_\_

Pacific Mill and Mine Supply Co.

Per F. Moulin Assistant Secretary \_\_\_\_\_

(Licktenberger-Feogusen Co.

(L. A. Saddlery &amp; F. Co. by Chatard 6/13/17

The undersigned hereby acknowledges notice of the contents of the above and foregoing instrument, of the trust therein created, and of its appointment as trustee therein named. It hereby accepts said trust.

CITIZENS NATIONAL BANK  
OF LOS ANGELES

By .....

E. A. HARDISON PERFORATING CO.  
BROWN & BIGELOW  
M. P. FLICKINGER  
HOPPER MACHINE WORKS

By E. M. Hopper

H. E. JAYNES Oxyocetylene Nuklay  
THE MARVEL COMPOUND CO.

[Endorsed]: No. D 32 Eq. Dept. . . In the District Court of the United States, in and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, and C. C. Harris, plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Complaint in Equity. Filed



Jul. 16, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, suite 701 Washington Building, Los Angeles, Cal., attorneys for plaintiff.

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

No. In Equity.

**Motion to Dismiss.**

Now comes Tarr and McComb, incorporated, a corporation, the defendant in the above entitled action, and moves the court to dismiss this action and that it takes its costs in this suit incurred for the following reasons:

I.

Because it appears in the complaint filed in this cause that certain indispensable parties defendant, to-wit: some of the creditors of the plaintiffs as shown by Exhibit F, the trustee for said creditors and one of the lessors in the leases described, are citizens of the same state as the state in which the plaintiffs are citizens, and therefore no diversity of citizenship exists as alleged and upon which basis the court is alleged to have jurisdiction.

## II.

That it appears from the complaint filed in this cause that there is a misjoinder of parties plaintiff in that plaintiff C. C. Harris is not interested in the subject matter of the suit and is not entitled under the allegations of the complaint to any of the relief sought.

## III.

That there is insufficiency of fact to constitute a valid cause of action in equity against the defendant.

## IV.

That there is a non-joinder of indispensable parties, to-wit, the creditors of plaintiffs, the trustees for said creditors plaintiffs and defendant, and the lessors of the leases set out in the complaint.

CHARLES C. MONTGOMERY,

Solicitor for Defendant.

LYNN HELM,

Of Counsel.

[Endorsed]: Original. No. D 32 Eq. United States District Court, Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, and C. C. Harris, plaintiffs, vs. Tarr & McComb, Incorporated, a corporation, defendant. Motion to Dismiss. Received copy of within motion to dismiss this 4th day of August, 1917. Cates & Robinson, attorney for plaintiffs. Filed Aug. 4, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk.

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

HARRIS AND STEVENS CORPORATION, a Cor-  
poration, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

No. D-32. In Equity.

**Decree Dismissing Suit on Defendant's Motion to  
Dismiss.**

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, on the 22nd day of October, 1917, the Honorable Oscar A. Trippet, District Judge, announced his decision, and caused a minute entry thereof to be made as follows:

“This cause having heretofore been submitted to the court for its consideration and decision on defendant's motion to dismiss the bill of complaint; the court, having duly considered the same, and being fully advised in the premises, now announces its conclusions thereon, and it is accordingly ordered that said motion of defendant to dismiss the bill of complaint be, and same hereby is granted.”

It is, therefore, ordered, adjudged and decreed as follows, viz:

That defendant's motion to dismiss be sustained, and that this cause be and hereby is dismissed, and

that defendant recover from plaintiffs its costs herein expended.

BLEDSON,

District Judge.

Judge Trippet being absent, it is stipulated that the signature to the foregoing order may be by Judge Bledsoe, O. K. as to form.

CATES & ROBINSON,

Solicitors for Plaintiffs.

Decree entered and recorded October 25th, 1917.

WM. M. VAN DYKE, Clerk.

By T. F. Green, Deputy.

[Endorsed]: No. D-32. In Equity. United States District Court in and for the Southern District of California, Southern Division. Harris & Stevens Corporation, a corporation, and C. C. Harris, plaintiffs, vs. Tarr & McComb, Incorporated, a corporation, defendant. Decree Dismissing Suit on Defendant's Motion to Dismiss. Filed Oct. 25, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Charles C. Montgomery, attorney for plaintiff, 908 Security Building, Los Angeles, California.

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

HARRIS AND STEVENS CORPORATION, a Cor-  
poration, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

No. D-32. In Equity.

**Petition for Appeal.**

The above named plaintiffs, Harris and Stevens Corporation and C. C. Harris, believing themselves to be aggrieved by the decree of this court made and entered in this cause on the 25th day of October, 1917, dismissing plaintiffs' bill of complaint in the above entitled cause, hereby appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and pray that this, their bill, may be allowed and that citation issue as provided by law, and that a transcript of record and proceedings and papers in said cause upon which the decree was made, may be sent, duly authenticated, to the United States Circuit Court of Appeals for the Ninth Circuit sitting in the Post Office Building in the city and county of San Francisco, state of California.

HARRIS and STEVENS CORPORATION.

C. C. HARRIS.

By their attorneys,

CATES & ROBINSON,

Suite 701 Washington Building, 311½ South Spring  
Street, Los Angeles, California.

[Endorsed]: Original. No. D-32. In equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, et al., plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Petition for Appeal. Filed Nov. 24, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, suite 701 Washington Building, Los Angeles, Cal., attorneys for plaintiffs.

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

No. D-32. In Equity.

### **Assignments of Error.**

The plaintiffs above named, by Cates & Robinson, their attorneys, assign errors to the decree entered in this cause because the learned trial judge erred:

First: In dismissing the complaint herein for want of jurisdiction.

Second: In dismissing the complaint herein on the ground that certain indispensable parties defendant, to-wit, some of the creditors of plaintiffs as shown by Exhibit "F" to plaintiffs' complaint, the trustee for said

creditors and one of the lessors in the leases described are citizens of the same state as the state in which the plaintiffs are citizens, and that no diversity of citizenship exists.

Third: In dismissing the complaint herein on the ground that there is a misjoinder of parties plaintiff in that plaintiff, C. C. Harris, is not interested in the subject matter of the suit, and is not entitled under the allegations of the complaint to any of the relief sought.

Fourth: In dismissing the complaint herein on the ground that there is insufficiency of fact to constitute a valid cause of action in equity against the defendant.

Fifth: In dismissing the complaint herein on the ground that there is a misjoinder of indispensable parties, to-wit, the creditors of the plaintiffs, the trustee for said creditors, plaintiffs and defendant and the lessors of the leases set out in the complaint.

Sixth: In entering the decree herein dated the 25th day of October, 1917.

Wherefore plaintiffs pray that the decree of said District Court of the United States for the Southern District of California be reversed, and that said court may be directed to correct its error in entering the decree dismissing the bill of complaint, and to require the defendant to answer in said cause.

Dated Los Angeles, California, November 19th, 1917

Yours, etc.,

CATES & ROBINSON,

Attorneys for Plaintiffs.

Suite 701 Washington Building, 311½ South Spring Street, Los Angeles, California.

[Endorsed]: Original. No. D-32. In equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, et al., plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Assignment of Error. Filed Nov. 24, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, suite 701 Washington Building, Los Angeles, Cal., attorneys for plaintiffs.

*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,  
Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

No. D-32. In Equity.

**Order Granting Petition for and Allowing Appeal.**

The petition for appeal herein is granted and the appeal allowed upon giving bond conditioned as required by law, in the sum of three hundred (\$300.00) dollars.

Dated at Los Angeles, California, November 24, 1917.

TRIPPET,

Judge of the District Court of the United States, for the Southern District of California, in the Ninth Circuit.



[Endorsed]: Original. No. D-32. In equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, et al., plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Order Granting Petition for and Allowing Appeal. Filed Nov. 24, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, 701 Washington Building, Los Angeles, Cal., attorneys for plaintiffs.

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS.

Plaintiff-Appellants,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant-Respondent.

No. D-32. In Equity.

**Bond on Appeal.**

Know all men by these presents: That Harris and Stevens Corporation, a corporation, and C. C. Harris, as principals, and United States Fidelity & Guaranty Company, a corporation under the laws of the state of Maryland, with its principal place of business in the city of Baltimore, state of Maryland, as surety, are held and firmly bound unto the above named Tarr & McComb, Incorporated, a corporation, in the sum of three hundred (\$300.00) dollars, to be paid to the

said Tarr & McComb, Incorporated, for the payment of which well and truly to be made said principals and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed and dated the 14th day of November, 1917.

Whereas, the above named Harris and Stevens Corporation and C. C. Harris have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled suit by a judge of the District Court of the United States, for the Southern District of California:

Now, therefore, the condition of this obligation is such that if the above named Harris and Stevens Corporation and C. C. Harris shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise, the same shall be and remain in full force and virtue.

UNITED STATES FIDELITY &  
GUARANTY COMPANY,

By Fred S. Hughes,

Attorney-in-Fact.

(Corporate Seal)

State of California, County of Los Angeles—ss.

On this 14th day of November, 1917, before me personally came Fred S. Hughes, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the United States Fidelity & Guaranty Company, the corporation de-

scribed in and which executed the foregoing bond of Harris and Stevens Corporation and C. C. Harris as surety, and acknowledged to me that he subscribed the name of United States Fidelity & Guaranty Company thereto as principal, and his own name as attorney-in-fact, and who being by me duly sworn, did depose and say that he resides in the city of Los Angeles, state of California, and that he knows the corporate seal of said corporation; that the said United States Fidelity & Guaranty Company is duly incorporated under the laws of the state of Maryland, that said company has complied with the provisions of the Act of Congress of August 13, 1894, that the seal affixed to the within bond of Harris and Stevens Corporation and C. C. Harris is the corporate seal of said United States Fidelity & Guaranty Company and was thereto affixed by authority of the board of directors of said company; and that the assets of said company unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever by more than the sum of \$1,000,000.00.

FRED S. HUGHES.

Signed, sworn to and acknowledged before me this 14th day of November, 1917.

(N. S.)

AGNES L. WHITE,

Notary Public in and for the county of Los Angeles,  
State of California.

The within and foregoing bond on appeal is approved.

Dated Los Angeles, California, November 24, 1917.

TRIPPET,

District Judge.

[Endorsed]: No. D-32. In equity. In the District Court of the United States, in and for the Southern District of California, Southern Division. Harris and Stevens Corporation, a corporation, et al., plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Bond on Appeal. Filed Nov. 24, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Cates & Robinson, suite 701 Washington Building, Los Angeles, Cal., attorneys for plaintiffs.

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*United States of America, District Court of the United States, Southern District of California.*

HARRIS AND STEVENS CORPORATION, a Corporation, and C. C. HARRIS,

Plaintiffs,

vs.

TARR & McCOMB, Incorporated, a Corporation,  
Defendant.

Clerk's Office. No. D-32. In Equity.

**Praeceptum for Record.**

To the Clerk of Said Court:

Sir: Please certify copies of the following papers on file in your office to be used as part of the record on appeal in this case before the United States Circuit Court of Appeals for the Ninth Circuit:

Complaint and exhibits annexed.

Motion of defendant to dismiss the bill.

Final decree.

Petition for appeal and order allowing the same.

Citation.

Bond on appeal.

Assignments of Error.

Praeipie.

Clerk's certificate of correctness of transcript of record.

Respectfully yours,

CATES & ROBINSON,

Attorneys for Plaintiffs.

Suite 701 Washington Building, 311½ South Spring Street, Los Angeles, California.

Dated Los Angeles, California, November 19th, 1917.

[Endorsed]: Original. No. D-32. In equity. U. S. District Court, Southern District of California, Sou. Div. Harris and Stevens Corporation, a corporation, and C. C. Harris, plaintiffs, vs. Tarr & McComb, incorporated, a corporation, defendant. Praeipie for Record. Filed Nov. 24, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk.

